

## Message Text

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PAGE 01 STATE 227522  
ORIGIN EB-08

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DRAFTED BY EB/BP:HJWINTER/L/EB:SBENSON:BT  
APPROVED BY EB/IFD/BP:HARVEY J. WINTER  
EB/IFD:CMEISSNER  
JUSTICE/ANTITRUST:JSHENEFIELD  
JUSTICE/ANTITRUST:DROSENTHAL  
EUR/NE:DGOODMAN (SUBS)  
L/EB:PTRIMBLE

-----072782 220910Z /21

R 212235Z SEP 77  
FM SECSTATE WASHDC  
TO AMEMBASSY LONDON

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E.O. 11652: GDS

TAGS: ETRD, UK

SUBJECT: PROPOSED AGENDA FOR US-UK BILATERAL DISCUSSIONS  
ON EXTRATERRITORIAL MATTERS

1. IN ACCORDANCE WITH THE AGREEMENT WITH THE BRITISH TEAM  
AT THE PRELIMINARY DISCUSSIONS IN LONDON ON SEPTEMBER 12-13  
ON EXTRATERRITORIAL MATTERS, THE UNITED STATES TEAM PRO-  
POSES THE FOLLOWING AGENDA FOR THE DISCUSSIONS IN WASHING-  
TON ON OCTOBER 31 AND NOVEMBER 1:

QUOTE

EXTRATERRITORIALITY (ETT) AND NON-ANTITRUST MATTERS  
(OCTOBER 31)  
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I. NATIONAL VIEWS OF JURISDICTION

-- A. GENERAL APPROACH AND RATIONALE; IDENTIFICATION OF  
-- NATIONAL INTERESTS WHICH LIE BEHIND ASSERTION OF  
-- JURISDICTION AND NATIONAL INTERESTS WHICH MAY BE  
-- AFFECTED BY ASSERTION OF JURISDICTION BY ANOTHER

-- COUNTRY.

-- B. 'PERSONAL JURISDICTION' - CLARIFY VIEWS OF RESPEC-  
-- TIVE GOVERNMENTS; PARTICULAR ISSUE IS JURISDICTION  
-- OVER FOREIGN AFFILIATES OF DOMESTIC COMPANIES.

-- C. 'SUBJECT MATTER JURISDICTION' - CLARIFY VIEWS OF  
-- RESPECTIVE GOVERNMENTS, PARTICULARLY WITH RESPECT  
-- TO 'EFFECTS' DOCTRINE.

II. LEGISLATIVE CLAIMS TO ETT JURISDICTION OTHER THAN  
-- ANTITRUST

-- A. EXPORT ADMINISTRATION AMENDMENTS OF 1977: UK  
-- CONCERNS ABOUT RECENT AMENDMENTS OF EXPORT ADMIN-  
-- ISTRATION ACT, IN PARTICULAR THOSE PROVISIONS  
-- WHICH ATTEMPT TO CONTROL ACTIONS BY US-CONTROLLED  
-- COMPANIES OPERATING IN OTHER COUNTRIES.

-- 1. DEFINITION OF THE TERM 'ACTIVITIES IN THE  
-- INTERSTATE OR FOREIGN COMMERCE OF THE  
-- UNITED STATES'

-- 2. DEFINITION OF THE TERM 'CONTROLLED FACT' WITH  
-- REFERENCE TO CONTROL EXERCISED BY A DOMESTIC  
-- U.S. CONCERN OVER A FOREIGN SUBSIDIARY OR  
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-- AFFILIATE

-- 3. REPORTING REQUIREMENTS CONTAINED IN SECTION  
-- 4A(B)2 WHICH MIGHT REQUIRE SUBMISSION OF  
-- INFORMATION BY THE UK COMPANIES

-- B. POSSIBLE NEW US SHIPPING LEGISLATION ON POLLUTION  
-- AND SAFETY

-- C. CORRUPT PRACTICES

-- D. EXISTING TRADING WITH THE ENEMY ACT

EXTRATERRITORIALITY (ETT) AND ANTITRUST MATTERS, NOVEMBER 1

I. PHILOSOPHY AND OBJECTIVES OF ANTITRUST ENFORCEMENT

-- A. POLITICAL AND ECONOMIC CONSIDERATIONS, INCLUDING  
-- PROTECTION OF CONSUMER AND PROTECTION OF EXPORTER.

-- B. JUDICIAL VS. ADMINISTRATIVE APPROACH; ENFORCEMENT  
-- FLEXIBILITY.

- C. INTERNATIONAL CONSENSUS ON NATIONAL ANTITRUST
- ISSUES.

## II. JURISDICTIONAL CONSIDERATIONS PARTICULARLY RELEVANT TO

- ANTITRUST MATTERS

- A. PERSONAL JURISDICTION.
- B. SUBJECT MATTER JURISDICTION.

## III. COMITY

- A. DEFINITION AND PURPOSE.
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- B. DISTINCTION AMONG THE PRINCIPLE OF COMITY, THE 'ACT
  - OF STATE' DOCTRINE, SOVEREIGN IMMUNITY, AND THE
  - GOVERNMENT COMPULSION DEFENSE; RELEVANCE OF NATION-
  - AL POLICIES NOT EXPRESSED IN LEGISLATION.
- C. APPROPRIATENESS OF CASE-BY-CASE CONSULTATIONS AND
  - EFFORT AT ACCOMMODATION OF NATIONAL INTEREST EVEN
  - WHERE DIRECT CONFLICT OF LAW OR POLICY.

## IV. NOTIFICATION AND CONSULTATION

- A. PURPOSE OF NOTIFICATION AND CONSULTATION INCLUDING
  - EFFECT ON PROSECUTORIAL DECISIONS AND REACTION OF
  - RECIPIENT GOVERNMENT.
- B. TIMING.
- C. EXCHANGE OF INFORMATION INCLUDING OBJECT OF THE
  - INVESTIGATION AND NATIONAL INTERESTS EFFECTED.
- D. NOTIFICATION OF INTERVIEWS ('PERSONAL VISITATION')
  - BY U.S. OFFICIALS IN ENGLAND.

## V. SERVICE OF PROCESS, INCLUDING SUBPOENAS AND CIVIL

- INVESTIGATION DEMANDS (CID'S)

- A. JURISDICTION OVER PERSONS AND ACTIVITIES.
- B. SCOPE OF SUBPOENAS OR CID'S.
- C. VOLUNTARY VS. COMPULSORY.

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-- D. NOTIFICATION AND CONSULTATION.

-- E. GOVERNMENTAL ASSISTANCE; HAGUE CONVENTION ON SERVICE OF PROCESS.

VI. POSSIBLE DISCUSSION OF CURRENT ANTITRUST MATTERS

-- A. URANIUM.

-- B. INTERNATIONAL OIL COMPANIES.

-- C. PLATINUM.

END QUOTE.

2. EMBASSY IS REQUESTED TO COMMUNICATE FOREGOING PROPOSED AGENDA TO WILLIAM KNIGHTON, DEPARTMENT OF TRADE, AS HEAD OF UK TEAM IN SEPTEMBER 12-13 DISCUSSIONS. INFORM KNIGHTON THAT WE WOULD APPRECIATE UK COMMENTS AND APPROVAL OF AGENDA ASAP IN ORDER THAT WE MAY MAKE FINAL PREPARATIONS FOR THE MEETING. VANCE

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## Message Attributes

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**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Date:** 22 May 2009  
**Disposition Event:**  
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**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Subject:** PROPOSED AGENDA FOR US-UK BILATERAL DISCUSSIONS ON EXTRATERRITORIAL MATTERS  
**TAGS:** ETRD, UK, US  
**To:** LONDON  
**Type:** TE  
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**Review Markings:**  
Margaret P. Grafeld  
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